

GEORGE T. MCDONALD
CASCADE RANCHES, INC.

IBLA 77-487

Decided May 12, 1978

Appeal from decision by District Manager, Medford, Oregon District, Bureau of Land Management, rejecting a grazing lease application (OR-0122).
Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Grazing Leases: Generally -- Grazing Leases: Renewal

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

APPEARANCES: George T. McDonald, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

George T. McDonald has appealed from a decision by the Manager of the Medford, Oregon, District of the Bureau of Land Management (BLM), dated April 8, 1977, which rejected his application for a grazing lease of sec. 5, T. 37 S., R. 2 E., Willamette Meridian, Oregon, and granted the conflicting application of Cascade Ranches, Inc., for renewal of its existing lease of such lands.

The applications were filed under the authority of section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970). The record shows that both appellant and Cascade Ranches, Inc., are preference right applicants as contiguous land owners. 43 CFR 4121.2-1(c)(1). Both parties were given the opportunity to agree to a division of land for grazing purposes prior to disposition of the conflicting applications by the authorized officer. 43 CFR 4121.2-1(d)(1). When agreement could not be reached by the

applicants, BLM determined the disposition of the land based on the governing factors set out in 43 CFR 4121.2-1(d)(2). 1/

The District Manager summarized the pertinent controlling facts as follows:

1. Both parties show a need for the federal range.
2. Cascade Ranch has been cooperative and [has] practiced sound range management on BLM land as well as on their own private land. Our records show that Mr. McDonald has applied five times. He has withdrawn his application twice. It was rejected once for not being timely filed and once because he was not in the livestock business at the time of application.
3. Both parties are presently in the livestock business.
4. Cascade has one year historical use on the federal range in conflict.

Due to the small number of AUMs involved, it would not be practical to divide the area in conflict. Therefore, the area should be used by one [lessee].

After reviewing the regulatory standards and the current circumstances of the case, the District Manager reached the same conclusion as previously in 1974, where appellant's conflicting application was rejected in favor of the renewal application of the then existing lessee, Devon Acres Ranch. That determination was affirmed on appeal to this Board in George T. McDonald, 18 IBLA 159 (1974).

In this appeal McDonald questions the true need of Cascade Ranches for the grazing use of sec. 5, T. 37 S., R. 2 E. He points to the fact that Cascade is a large corporation with a large grazing operation, owning 10,000 acres, and leasing 4,400 acres of public

1/ This section of the regulation provides:

"(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (1) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application 1 (where access is not presently available), and (vii) other land use requirement." (Footnote omitted.)

grazing land. In comparison, he owns only 278 acres which he operates himself and he contends that section 5 is the only piece of public land for which he qualifies.

Aside from appellant's allegations, he has presented no positive evidence to show that he has a greater need for section 5 than the existing lessee, that the award is not proper range management or that the existing lessee is not in good standing under the old lease.

[1] This Board has previously upheld the renewal of grazing leases and the rejection of conflicting applications where BLM determined that the conflicting applicant had not demonstrated the award was improper under regulatory criteria. See Wesley Leininger, 28 IBLA 93 (1976); Doyr Cornelison, 24 IBLA 155 (1976). However, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C.A. § 1752(c) (West Supp. 1977), enacted on Oct. 21, 1976, provides the following:

So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 1712 of this title or section 1604 of Title 16, (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease. [Emphasis supplied.]

Therefore, as long as the existing lessee is a preference applicant and is in good standing under the old lease, it is entitled to first priority for the new lease. Mark X. Trask, 32 IBLA 395 (1977); Allen R. Prouse, 32 IBLA 311, 84 I.D. 874, (1977)

There is no suggestion in the case record that Cascade Ranches, Inc., was not "in compliance with the rules and regulations issued and the terms and conditions in the * * * lease," nor has appellant made any indication of noncompliance.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

decision of the District Manager rejecting the application of George T. McDonald is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

